

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF BILLERICA, MASSACHUSETTS

These Comments are filed by Billerica, Massachusetts in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Billerica, Massachusetts believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable service providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a license. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance, which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Billerica, Massachusetts is a town with a population of approximately 39,000. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1978.

Our Current Franchise

Our current franchise began on November 2, 1998 and expires on November 1, 2008. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are in initial stages of negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the town in the amount of 5% of the cable operator's revenues, less applicable license fees. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access. The Licensee shall make available to the Town one additional PEG Access Channel at such time that the three PEG Access Channels are used to cablecast locally-produced, non-commercial, non-character-generated programming seventy-five percent of the time, for six consecutive weeks; provided, however, that specific programming may be cablecast and recablecast a total of six times during said six week period.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator. The Licensee shall provide to the Town totaling the amount of five hundred fifty thousand dollars to be used for the purchase and / or lease of PEG Access equipment and facilities, as follows:

Year One:	\$100,000.00
Year Two:	75,000.00
Year Three:	50,000.00
Year Four:	50,000.00
Year Five:	50,000.00
Year Six:	50,000.00
Year Seven:	50,000.00
Year Eight:	50,000.00
Year Nine:	50,000.00
Year Ten:	25,000.00

Total:	\$550,000.00
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Our franchise contains no institutional network ("I-Net") or institutional network requirements, but the Licensee has provided one institutional network connection from Billerica Town Hall to Billerica Access Television, Inc.

Our franchise contains the following requirements regarding emergency alerts: The Subscriber Network shall comply with the FCC's Emergency Alert System ("EAS") regulations.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

The Licensee shall offer a ten percent (10%) discount on the basic service tier, or any such equivalent tier, as may exist in the future, to all senior citizens in the Town, age 65 years and older.

For the entire term of the license, the Licensee shall maintain a bill payment and equipment return / exchange location within the Town; provided, however, that the Licensee shall maintain such an equipment return location provided that the Licensee has a reasonable agreement with a third-party in the Town to provide such a service at any time. Said location may be operated by a third party. The Licensee shall notify its subscribers of said location, periodically in its monthly bills.

The Licensee shall maintain sufficient customer service representatives to handle all subscriber calls, during normal business hours.

The Licensee shall establish a procedure for resolution of complaints by subscribers.

Our franchise contains the following reasonable build schedule for the cable operator: The Licensee shall continue to operate and make available to all residents of the Town its existing 750 MHz subscriber network, fed by means of a hybrid fiber-optic / coaxial cable network. Said cable system shall continue to be fully capable of carrying at least seventy-eight (78) analog NTSC video channels in the downstream direction and four (4) analog NTSC video channels in the upstream direction. Said 750 MHz cable system currently provides for 550 MHz of analog signal transmissions, with 200 MHz reserved for future digital or analog transmissions, which may be subject to change at the discretion of the Licensee.

The Licensee shall transmit all of its signals to Billerica subscribers in stereo, provided that such signals are furnished to the Licensee in stereo.

Our franchise requires that the cable operator currently provide service to the following areas of our community: The Licensee shall make its cable system service available to all residents of the Town, subject only to the installation charges herein.

Installation charges shall be non-discriminatory. A standard aerial installation charge shall be established by the Licensee which shall apply to any

residence located not more than one hundred fifty feet (150') from the existing aerial trunk and distribution system and additions thereto.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: At the performance evaluation hearing(s), the Licensee shall review with the Issuing Authority changes in relevant cable television technology (as defined below) that might benefit Billerica subscribers. For purposes of this section, "relevant cable television technology" shall be defined as those technologies that the Licensee and the Issuing Authority shall, in good faith, agree to be included in said annual hearing. Such technologies shall include, but not be limited to, subscriber converters optimally compatible with VCRs and cable-ready television sets, high -definition television, digital compression, remote control devices and new scrambling / descrambling processes.

Notwithstanding the annual requirements of the paragraph above, upon request, the Licensee shall keep the Issuing Authority up-to-date on those technological developments that will have an impact on Billerica subscribers including, but not limited to, new subscriber equipment for the home.

Our franchise contains a "level playing field" provision which states the following: This renewal license shall not affect the right of the Issuing Authority to grant to any other person a license or right to occupy or use the public ways or streets, or portions thereof, for the construction, upgrade, installation, operation or maintenance of a cable television system within the Town of Billerica; or the right of the Issuing Authority to permit the use of the public ways and places of the Town for any purpose(s) whatsoever. The Licensee hereby acknowledges the Issuing Authority's right to make such grants and permit such uses.

The grant of any additional cable television license(s) shall not be on terms more favorable or less burdensome than those contained in this renewal license. The grant of any additional cable television licenses(s) shall be at the sole discretion of the Issuing Authority.

In the event that the Licensee believes that any additional cable television license(s) have been granted in terms and conditions more favorable or less burdensome than those contained in this renewal license, the Licensee may request, in writing, that the Issuing Authority convene a public hearing on that issue. Along with said written request, the Licensee shall provide the Issuing Authority with written reasons for its belief. At the public hearing, the Issuing Authority shall afford the Licensee an opportunity to demonstrate that any such additional cable television license(s) are on terms more favorable or less burdensome than those contained in this renewal license. The Licensee shall provide the Issuing Authority with such financial or other relevant information as is requested.

Should the Licensee demonstrate that any such additional cable television license(s) have been granted on terms and conditions more favorable or less burdensome than those contained in this renewal license, the Issuing Authority shall consider and negotiate, in good faith, equitable amendments to this renewal license.

The issuance of additional license(s) shall be subject to applicable federal law(s), and M.G.L. Chapter 166A and applicable regulations promulgated there under.

In the event that a multichannel video programming provider, which is not in any way an affiliate of the Licensee and not a satellite provider, hereafter provides programming to residents of the Town, and is not required by applicable law to be licensed by the Issuing Authority, in writing, that the providing of such programming of such multichannel video programming provider is having a substantial negative impact upon the financial viability of the Licensee's cable system in the Town, the Licensee may request, in writing, that the Issuing Authority convene a public hearing on that issue.

Our franchise contains the following insurance and bonding requirements: The Licensee shall carry insurance throughout the term of this license and any removal period, pursuant to M.G.L. Chapter 166A, S5(f), with the Town as an additional insured with an insurance company satisfactory to the Issuing Authority, indemnifying the Town and the Licensee from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance and / or removal of the cable television system. The amount of such insurance against liability for damage to property shall be no less than one million dollars as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than one million dollars. The amount of such insurance for excess liability shall be five million dollars in umbrella form.

The Licensee shall maintain, without charge to the Town, throughout the term of the license a faithful performance bond running to the Town, with good and sufficient surety licensed to do business in the State in the sum of one hundred thousand dollars. Said bond shall be conditioned upon the faithful performance and discharge of all of the obligations imposed by this license.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The following specification shall apply to any person, corporation, or any utility governed by the state or public utilities commission, who for any reason cuts, disturbs, or otherwise defaces any Town property, being a public right-of-way, for purposes of installing or repairing or for any reason pertaining to the presence of any utility or structure in said public right-of-way.

A contractor is any individual, firm or corporation contracting with the department of public works, utility companies or developers for performance of prescribed work. Each contractor shall be insured and licensed by the Town as a certified contractor. Only licensed contractors shall be eligible to apply for R.O.W. opening permits.

Plans and profiles for any work within the Town right-of-way shall be submitted to the department for their approval. For minor installations such as service lines, drops, etc., simple sketch plans with pertinent information as to location and depth may suffice as the plans. Plans for installation to be made in streets having asphaltic surfaces, resurfaces, or seal coats less than 5 years old will have to be submitted to the Department of Public Works Director for their approval. These approvals are required prior to having a permit issued or work started. If during installations, changes are necessarily made, these must be shown on an "as-built plan" which will also be submitted to the department upon completion of the project.

The contractor acquiring a permit for the purpose of performing work on any Town right-of-way, is assumed to be familiar with, and at all times shall observe and comply with all Federal and State laws, local by-laws, ordinances affecting the conduct of his work. He shall indemnify and hold harmless the Town of Billerica in the Commonwealth of Massachusetts, and its representatives against any claims arising from any violation of such law, by-law, ordinance, or regulation; whether by the contractor himself or by the contractor's employees. The Town of Billerica reserves the right to refuse issuance of permits to any contractor not complying with the above outlined procedures or with these specifications.

The Town will decide all questions which may arise as to the quality and acceptability of materials furnished and / or work performed. The Town shall have the authority to suspend work, wholly, or in part, because of the failure of the contractor to properly prosecute the work in accordance with this resolution. The Town may undertake the inspection of the material at the source and shall have full entry at all times to those areas wherein the manufacture or production of the materials is taking place. The Town shall also have the authority to waive, wholly or in part, the requirements of these specifications, dealing with individual projects, for such reason it deems to be in the best public interest.

Before the Department shall issue a permit to any contractor, they shall have on file with the Department a valid license and bond in the minimum amount of \$10,000.00. Such bond shall be for the benefit of the Town and shall assure the financial viability and commitment of the contractor. Such bond shall be in force for at least one year. Additionally a temporary cash bond, in the form of certified check, treasure's check, or cashier's check issued by a responsible bank or trust company, shall be posed by the contractor until completion of repairs. Such bond shall be payable to the Town of Billerica and calculated as follows:

Local Roads:

Cross Cut Utility Trench	\$1,000.00
0' – 50' Longitudinal Trench	\$2,000.00
> 50' Longitudinal Trench (1 ¼" overlay half width)	\$3.00 / S.F.
> 50' Longitudinal Trench (1 ¼" overly full width)	\$2.00 / S.F.

Arterial and Collector Roads:

Cross Cut Utility Trench	\$2,000.00
0' – 50' Longitudinal Trench	\$2,000.00
> 50' Longitudinal Trench (1 ¼" overlay half width)	\$3.00 / S.F.
> 50' Longitudinal Trench (1 ¼" overly full width)	\$2.00 / S.F.

Before the Department shall issue a permit to any contractor, that contractor shall show evidence of a valid and enforceable bodily injury and property damage liability insurance policy, with minimum limits of:

Bodily Injury Coverage	\$250,000.00
Aggregate Coverage	\$500,000.00
Property Damage Coverage	\$50,000.00
NCU Coverage	\$500,000.00

Such policy shall be for the protection of the department from all suits, actions or claims of any type for injuries or damages allegedly sustained by any person or property as a result of the operations or completed operations of the work. Such policy shall specifically cover the acts and operations of any subcontractors or independent contractors of the contractor, in addition to the contractor's employees or agents.

In addition to the bonding and insurance requirements, the contractor personally, by applying for and obtaining a permit, agrees to be liable to the department for any expenses incurred by the department because of the contractors

acts and omissions relating to the work, and the contractor shall hold the department harmless from and claims of anyone else arising from or relating to the work. In accordance with these rules, the owner of any utility assumes responsibility for maintenance of said utility corridor in perpetuity.

Prior to commencing any work on and Town right-of-way, the contractor who will actually perform the work or his duly authorized representative shall obtain written permission to undertake said work in accordance with the following provisions.

Permits issued by the department shall pertain only to allowing work within the Town owned rights-of-way and is in no way a permit to enter onto private property adjacent to such right-of-way not to alter or disturb any facilities or installations existing within rights-of-way which may have been installed and are owned by the Commonwealth of Massachusetts, the Town or others.

Fees shall be assessed for permits and inspections at the time of issuance of the permit. The amount of said fee shall be established to cover the actual cost to the department incurred in the enforcement of these regulations and as approved by the Town.

Permits issued shall be available for inspection at the project site at all times. Said permit shall be shown to any representative of the department upon request.

Permits shall be required for emergency repairs, however, a delay of seventy-two (72) hours is granted in securing the permit. Notifying the department immediately of such emergency is a must and the department can be notified at any time during the 24-hour day, 7 days a week. Failure to acquire a permit within this specified time shall result in a penalty permit being issued. This is in lieu of a normal permit and the contractor shall have to pay the additional fee pertaining thereto.

Any contractor commencing work prior to obtaining a right-of-way cutting permit, except as provided herein, shall be required to obtain a penalty permit in lieu of normal permit, and shall pay the additional fee pertaining thereto.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Issuing Authority and / or its designee(s) shall have the right to inspect all construction and installation work performed subject to the provisions of the License in order to ensure compliance with the terms and conditions of the license and all other applicable law. Any such inspection shall not interfere with the Licensee's operations, except in emergency situations.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Jurisdiction and venue over any dispute, action or suit arising directly from this renewal license shall be in any court of appropriate venue and subject matter jurisdiction located in the State of Massachusetts and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit.

Except in an emergency situation, in the event that the Licensee or the Issuing Authority intends to take legal action against the other party for any reason, it shall first (1) give the other party reasonable notice that an action will be filed, (2) meet with the other party promptly before it files any such action, and (3) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party and / or its representative(s).

Competitive Cable Systems

Our community

- Has never been approached by a competitive provider to provide service.
- Has not denied any provider the opportunity to serve in our community.
- Does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in Billerica, Massachusetts. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and even handed manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Billerica, Massachusetts therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Town of Billerica, Massachusetts

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